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2
3 UNITED STATES COURT OF APPEALS
4 FOR THE SECOND CIRCUIT
5

6 SUMMARY ORDER
7

8 THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER
9 AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY
10 OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY
11 OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR
12 IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.
13

14 At a stated term of the United States Court of Appeals for the Second Circuit, held at the
15 Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on
16 the 31st day of August, two thousand six.
17

18 PRESENT:
19

20 HON. BARRINGTON D. PARKER,
21 HON. RICHARD C. WESLEY,
22 HON. PETER W. HALL,
23 *Circuit Judges.*
24

25
26 Xian Qiang Ou,
27 _____ *Petitioner,*
28

29 -v.-

No. 05-4865-ag
NAC

30
31 U.S. Department of Justice, Alberto R. Gonzales,* Attorney General
32 *Respondent.*
33
34

35 FOR PETITIONER: Khagendra Gharti-Chhetry, Esq., Chhetry & Associates, P.C., New
36 York, New York.
37

* Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Alberto R. Gonzales is automatically substituted for former Attorney General John Ashcroft as the respondent in this case.

1 FOR RESPONDENT: Anthony Payne, Assistant United States Attorney for the District of
2 Columbia (Kenneth L. Wainstein, United States Attorney; Madelyn
3 E. Johnson and Tricia Francis, Assistant United States Attorney)
4 (*on the brief*), Washington, D.C.
5
6

7 UPON DUE CONSIDERATION of this petition for review of the Board of Immigration
8 Appeals (“BIA”) decision, it is hereby ORDERED, ADJUDGED, AND DECREED that the
9 petition for review is DENIED.

10 Xiang Qiang Ou, through counsel, petitions for review of the August 2005 order
11 affirming the Immigration Judge’s (Gabriel C. Videla) decision denying his applications for
12 asylum and withholding of removal. We assume familiarity with the underlying facts and the
13 procedural history.

14 When the BIA adopts the decision of the IJ and supplements the IJ’s decision, this Court
15 reviews the decision of the IJ as supplemented by the BIA. *See Yan Chen v. Gonzales*, 417 F.3d
16 268, 271 (2d Cir. 2005). We review the agency’s factual findings under the substantial evidence
17 standard. *See* 8 U.S.C. § 1252(b)(4)(B); *Jin Hui Gao v. U.S. Att’y Gen.*, 400 F.3d 963, 964 (2d
18 Cir. 2005).

19 The BIA properly affirmed the IJ’s finding that Ou failed to prosecute his applications for
20 asylum and withholding of deportation, and thus the applications were waived. Pursuant to 8
21 C.F.R. § 1003.31(c), “[an] Immigration Judge may set and extend time limits for the filing of
22 applications and related documents If an application or document is not filed within the time
23 set by the Immigration Judge, the opportunity to file that application or document shall be
24 deemed waived.” *See also Hassan v. Gonzales*, 403 F.3d 429, 436 (6th Cir. 2005).

25 Ou failed to file his application and supporting documents within the generous deadlines

1 afforded to him by the IJ. He filed his original asylum application on April 24, 1994. Despite
2 numerous extensions by the IJ, he never produced additional documents that he alleged he would
3 receive from China and was unable to represent to the IJ that his new application was accurate
4 and complete. On September 12, 2003, the IJ granted Ou a three-month continuance and
5 scheduled a hearing for December 5, 2003, warning him that he must review the asylum
6 application, file any necessary amendments, and file any other documents upon which he would
7 rely by that date. The IJ also warned Ou and his counsel that if they failed to comply, he would
8 rule that he had waived his opportunity to pursue his claims for relief.

9 Ou did not fulfill any of the IJ's requests and was unable to show reasonable cause for
10 failing to do so. Thus, the IJ was permitted to deny Petitioner's application for relief on the basis
11 that it had been waived. *See* 8 C.F.R. § 1003.31(c). Accordingly, we conclude that the BIA
12 appropriately dismissed Ou's appeal.¹

13 We have considered all other arguments and find them to be without merit. For the
14 foregoing reasons, the petition for review is DENIED. Having completed our review, any stay of
15 removal that the Court previously granted in this petition is VACATED, and any pending motion
16 for a stay of removal in this petition is DENIED as moot.

17 FOR THE COURT:

18 Roseann B. MacKechnie, Clerk

19
20 By: _____

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¹We note that Ou is currently pursuing an adjustment of status application.

